

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

BROOKSHIRE BROTHERS : DOCKET NO. 04-1150
HOLDING, INC., ET AL

VS. : JUDGE TRIMBLE

TOTAL CONTAINMENT, INC, ET AL : MAGISTRATE JUDGE WILSON

MEMORANDUM RULING AND ORDER

Before the Court is a "Motion in Limine/Motion to Exclude Installation Opinions of Richard L. Fischer, Tom Fort and Donald E. Duvall" (doc. #1034) filed by third-party defendant, Pump Masters, Inc. which is opposed by defendants/cross claimants, Dayco Products, LLC and Mark IV Industries, Ltd., Commerce & Industry Insurance Company of Canada,¹ Cleveland Tubing, Inc., Ticona Polymers, Inc., Underwriters Laboratories, Inc., and Shell Chemical LP.

Richard Fischer

Pump Masters, Inc. ("PMI") seeks to exclude the installation opinions of Richard L. Fischer because Mr. Fischer has not installed hose/coupling assemblies for a hose with a corrugated inner tube such as TCI's flexpipe. Thus, PMI argues that Mr. Fischer does not have the requisite expertise with regard to installation of the flexpipe in this litigation.

Defendants/Cross-claimants make the following rebuttal. Mr. Fischer has a B.S. in Chemical Engineering and over thirty (30) years of experience in the thermoplastic hose and coupling industries. This experience includes traveling to customers and certified hose assemblers/

¹ Commerce & Industry was dismissed with prejudice from the suit on July 18, 2007. See doc. #1193.

distributors to inspect and evaluate how they assembled and installed thermoplastic hoses and couplings. While employed as the Senior Product Engineer for the Imperial Eastman Division of ITE Imperial and Gould, Mr. Fischer was responsible for developing thermoplastic hose and coupling assemblies, including internal expansion couplings which are attached and/or installed in a substantially similar manner as the flexpipe and couplings in this case. Mr. Fischer was also the Manager of Product Development and Quality Assurance - Hose and Couplings for the Eastman Division of Imperial Clevite and the Manager of Product Development, Quality Assurance and Manufacturing Engineering for the Eastman Division of Pullman during which he spent a significant amount of time establishing hose/coupling applications and connection parameters and evaluating the performance of hose/coupling assemblies to ensure that they were installed correctly and sealed properly. As the Vice-President of Engineering and as the Director of Engineering for the Eastman Division of Pullman, he performed the same quality assurance work on hose/coupling assemblies and installation previously described. As Director of Technical Service and Development for all Eastman products, Fischer was responsible for the development, engineering and quality assurance of air brake/hose and tubing used for heavy-duty trucks and buses. That experience included the examination and inspection of thousands of thermoplastic hose and metal coupling assemblies to ensure they were properly attached and sealed via internal expansion. As Director of Application Engineering for the Fluid Power Business Unit of Dayco Industrial, he exclusively traveled to customers to troubleshoot installation, application, and performance issues regarding hose and coupling attachments.

Although Mr. Fischer has not installed hose/coupling assemblies for a hose with a corrugated inner tube such as the TCI flexpipe, he has installed thousands of thermoplastic hose/coupling

assemblies that apply the same principles whether the hose/coupling assemblies are sealed via an internal expansion tool or a crimping device. As a member of SAE (1971-2002), Fischer served on various committees, including the Hose/Coupling Committee, where he became intimately familiar with all aspects of hose/coupling development, engineering, performance, installation and assembly, quality assurance, and failure analysis. He participated in the initial publication of SAE and its revisions (“Selection, Installation, and Maintenance of Hose and Hose Assemblies - SAE J1273 NOV91; SAE Recommended Practice”).

Fischer attended numerous examinations and inspections of flexpipe and coupling assemblies from the Brookshire Brothers’ stations at the PMI yard. He also attended inspections at Dayco’s Ocala, Florida facility to evaluate installation and performance issues of several TCI flexpipe/coupling assemblies from Brookshire Brothers’ stations. Fischer attended inspections at the TRL facility in Austin, Texas to evaluate installation and performance issues as to several TCI flexpipe/coupling assemblies from Brookshire Brothers’ stations. Fischer inspected two Brookshire Brothers’ stations and their TCI Enviroflex System installations.

The Court finds that Mr. Fischer is qualified to render an expert opinion concerning the installation of the flexpipe in this litigation.

Donald E. Duvall

PMI maintains that Mr. Duvall is not qualified to render an opinion as to the physical findings he made with regard to expansion of the brass coupling in the installation process because he admitted that he is not an expert in the operation of the expansion tool. In his report, Duvall criticizes PMI’s use of the expansion tool even though he admits that he only has a general understanding of how the tool functions.

Defendants/Cross-claimants rebut with the following: Dr. Duvall is familiar with how the hose/coupling attachment tools work from his 33 years in the industry. He has reviewed TCI's Installation Instructions for the Enviroflex System, including the operation of this specific internal expansion tool.

Dr. Duvall is a licensed Professional Engineer with a B.S. in Chemistry, a M.S. in Materials Science and Engineering, and a Ph.D. in Metallurgical Engineering. During his studies to obtain his B.S. in Chemistry, Dr. Duvall completed chemistry courses regarding plastic, metal, and rubber materials used to construct industrial hoses and couplings. He also completed physics courses that focused on static and dynamics – the study of stresses and strains on objects that are at rest. Defendants argue that these principles are directly applicable to the hose and internal expansion coupling device at issue in this case. During his studies to obtain his M.S. in Materials Science and Engineering, Dr. Duvall successfully completed more advanced scientific courses, including the Physics of Materials, which directly addressed the statics and dynamics issues discussed above. Dr. Duvall also completed more advanced engineering courses which directly addressed how metal materials and products respond to stresses and strains.

Dr. Duvall has 33 years of professional hands-on experience in a variety of scientific engineering fields which includes material selection for and the manufacturing and performance of hoses, piping, and tubing used to transmit all types of fluid products, including water, natural gas, fuels, crude oil and other fluids, and coupling systems for pipeline and hoses used for water, natural gas, oilfield fluids and slurry.

Dr. Duvall visually and objectively examined and inspected hundreds of hose/coupling assemblies from Brookshire Brothers' stations at PMI's yard. He also examined hundreds/thousands

of photographs of the hose/coupling assemblies from Brookshire Brothers' stations. Dr. Duvall has visually and microscopically examined several hose/coupling attachments from Brookshire Brothers' stations.

Even though Dr. Duvall has never operated the specific internal expansion tool used by TCI and/or PMI to attach the flexpipe and couplings in question, Defendants assert that he is very familiar with how substantially similar attachment tools function from his over 33 years of experience. Dr. Duvall reviewed TCI's Installation Instructions for the Enviroflex System, including the operation of the internal expansion tool to attach the hose and coupling to form a seal and knows how the expansion tool works. Dr. Duvall testified that his knowledge of how internal expansion tools function in general and for the tool used in this case comes from his education and work experience, his review of the TCI Installation Instructions, his physical examination of the couplings, and photographs and renderings of the tool, as well as from discussions with Tom Martin and Hal Mix of Dayco.

Based on the foregoing, the Court finds that Dr. Duvall has the educational background, professional work experience, and knowledge to issue his installation opinions this case.

Tom Fort

PMI maintains that Tom Fort is not qualified to render an opinion with regard to installation of flexpipe because he has never personally installed flexpipe nor seen any flexpipe installed. PMI also takes issues with the fact that Mr. Fort is not a licensed or certified installer.

Defendants make the following rebuttal: Defendants maintain that Mr. Fort is qualified to provide expert opinion testimony regarding the installation deficiencies in this case by his education, professional experience and knowledge. Mr. Fort is a geological engineer and has received a

Masters of Science Degree in Geological Engineering. His studies included geotechnical and civil engineering course work relevant to the proper installation of UST systems for retail service stations, including excavation, handling, and appropriate site preparation for the installation of dispensers, sumps and piping/hoses, sloping of trenches for the UST equipment and systems, and the compaction of backfill materials used to support UST equipment and systems. Defendants note that most service station appurtenances which Mr. Fort holds expertise are common among all service stations, regardless of manufacturer or installer. Furthermore, the majority of service stations are substantially similar in all these ways regarding general equipment requirements, equipment purpose, and equipment installation requirements, such that Mr. Fort's experience with non-TCI equipment further supports his qualification in this case.

Mr. Fort testified that he had focused and relevant experience with design specifications, regulatory requirements, compliance functions, testing, inspection, installation, operation, and maintenance of underground storage tank (UST) systems utilized in motor fuel service, including pumps, piping and containment systems. He has 22 years of total professional experience in this field, 19 of which were spent with Fortune 500 petroleum refining and marketing companies. He was responsible for the overall UST compliance for a Fortune 500 motor fuel refining and marketing company, and has served as the Regional Environmental Health and Safety Compliance Manager, including UST environmental compliance. He has had overall responsibility for UST compliance issues, including tank and line testing, inventory control, underground tank system upgrades, cathodic protection, service station employee environmental training, and development of procedures, specifications, and schedules to implement spill/overfill prevention programs.

Mr. Fort relies on the information he has reviewed in this case, his knowledge and expertise

of gasoline manufacture, storage, distribution and retail marketing; UST systems; geology and ground-water hydrology; environmental site characterizations and assessment; remediation; gasoline transport and fate in the subsurface; and 22 years of experience in the environmental field.

Mr. Fort served as the Director of Remediation and Environmental Services with Sunoco and managed 29 professionals who provided all required corporate environmental and remediation services, and directed underground tank compliance. He participated in the development of corporate underground tank and piping specifications. Mr. Fort's duties at Sunoco included all aspects of UST system compliance, leak detection, release prevention, and remediation, as well as serving on a multi-disciplinary teams to ensure that the company's installation and equipment specifications were met, satisfied, and/or updated as needed. As the Compliance Manager for Chevron USA, Mr. Fort had similar duties and was on site for hundreds of service station excavations for removal, installation, upgrade, and/or replacement of UST systems.

Mr. Fort testified that he is intimately familiar with UST equipment and systems and installation issues from his work at Sunoco, including the same Veeder-Root alarm system used by Brookshire Brothers. He has experience with systems similar to TCI's Secondary Containment System where there is a primary hose within a secondary hose and their installation. He has provided expert consultation in a litigation case involving Environ Geoflex, another flexhose product. While at Sunoco, the company owned and acquired gasoline service stations that were equipped with flexhose. As Environmental Director at Sunoco, Mr. Fort was personally involved in due diligence on purchasing blocks of operating service station real estate assets, including the testing of primary flexhose and secondary containment equipment to ensure that it was installed properly and was sealed correctly or tight. Fort investigated leaks and conducted inspections of stations hundreds of

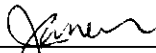
times during his career. He has reviewed hundreds of pictures regarding the installation of the TCI system at Brookshire Brothers and has visited two of their service stations. Therefore, Defendants maintain that Mr. Fort is intimately familiar with the installation issues and problems presented in this case based on his professional work experience.

The Court concludes that based on his education and professional work experience and knowledge, Mr. Fort is qualified to render an opinion on the installation issues regarding TCI's Enviroflex Secondary Containment System.

ORDER

Based on the foregoing the motion to exclude the opinions of Richard L. Fischer, Tom Fort and Donald E. Duvall (doc. #1034) is hereby **DENIED**.

THUS DONE AND SIGNED in Chambers at Lake Charles, Louisiana, this 5th day of September, 2007.



JAMES T. TRIMBLE, JR.
UNITED STATES DISTRICT JUDGE